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Unilateral economic measures as a means of political and economic coercion against developing countries

Report of the Secretary-General

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I. Introduction

1. The present report has been prepared in response to General Assembly resolution 52/181 of 18 December 1997, entitled "Unilateral economic measures as a means of political and economic coercion against developing countries". In that resolution, the Assembly, *inter alia*, expressed grave concern that the use of unilateral coercive economic measures particularly adversely affected the economy and development efforts of developing countries and had a general negative impact on international economic cooperation and on worldwide efforts to move towards a non-discriminatory and open multilateral trading system. The Assembly reaffirmed that no State might use or encourage the use of unilateral economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

2. In the same resolution, the General Assembly urged the international community to adopt urgent and effective measures to eliminate the use of unilateral coercive economic measures against developing countries that were not authorized by relevant organs of the United Nations or were inconsistent with the principles of international law as set forth in the Charter of the United Nations, and that contravened the basic principles of the multilateral trading system. The Assembly requested the Secretary-General to continue to monitor the imposition of measures of that nature and to study the impact of such measures on the affected countries, including the impact on trade and development, and to report to it at its fifty-fourth session on the implementation of Assembly resolution 52/181.

3. Accordingly, the Secretary-General, in a note verbale dated 21 April 1999, invited the Governments of all States to provide their views or any other relevant information on the issue. As at 15 October 1999, replies had been received from the following 13 States: Belarus, Belgium, Botswana, Brunei Darussalam, Cuba, Germany, Jamaica, Malta, Mexico, Paraguay, Poland, United States of America and Uruguay. Substantive features of those replies are summarized in section II of this report.

4. In addition, relevant organizations, programmes and agencies inside and outside the United Nations system were also invited to provide information and analyses concerning recent developments in the subject area. Based on the information received, section III of the report contains a review of recent actions taken by United Nations bodies.

5. Moreover, the Department of Economic and Social Affairs of the United Nations Secretariat convened an ad hoc expert group meeting to seek the views of internationally renowned think-tanks on the subject. Deliberations of the experts are summarized in section IV of this report.

II. Replies received from States

6. **Belarus** does not accept promulgating any unilateral extraterritorial coercive measures that go against the norms of international law, and the provisions of the Charter of the United Nations, which authorize only the Security Council to impose appropriate sanctions, as well as the universally recognized principles of the sovereign equality of States and non-interference in their internal affairs.

7. **Belgium** does not use unilateral measures as a means of political and economic coercion against developing countries, except those imposed in the framework of the European Union (EU), often in the implementation of the resolutions of the Security Council.

8. **Botswana** continues to oppose the imposition of unilateral coercive measures against developing countries and its support for General Assembly resolution 52/181 testifies to this principled position.

9. **Brunei Darussalam** supports General Assembly resolution 52/181 and is of the position that all international trade disputes should be resolved within the framework of the World Trade Organization and its multilateral agreement.

10. **Cuba** once again condemns the use of unilateral coercive economic measures as a means of exerting political and economic pressure on developing countries. The promulgation of legislation that promotes the use of unilateral economic measures in the pursuit of political objectives is a flagrant violation of the rules of international law and, in particular, of the principles, objectives and rules that govern trade between nations. Cuba considers that such actions weaken efforts to move towards an increasingly equitable, secure, non-discriminatory, transparent and predictable trading system. Provisions such as those contained in the so-called Toricelli and Helms-Burton Acts, recent examples of the policy of economic, trade and financial blockade that the United States of America has been implementing against Cuba for almost 40 years, are incompatible with the agreements of the World Trade Organization and with the commitments made by the United States itself in that forum.

11. Cuba considers that the unilateral nature and extraterritorial, coercive scope of the above-mentioned Acts are contrary to the obligations assumed by members of the World Trade Organization to bring their trade legislation and

practices into line with the letter and spirit of the regulations governing international trade relations. This United States policy of implementing unilateral coercive economic measures against Cuba has been widely rejected by the international community, including the United States' own allies and Governments, parliaments, international organizations and many social organizations which have called for them to be lifted. However, the Government of the United States has ignored these requests and, rather than terminate the policy in question, has endeavoured to make it broader and more effective.

12. In the opinion of Cuba, to agree that a country, however powerful, may use force in order to compel one or more other countries, by means of economic measures, to do its bidding will lead to chaos in international relations and will detract from the World Trade Organization as a global trade regulatory agency and as a framework for resolving trade disputes through established multilateral procedures. Cuba reiterates that these and all other economic measures practised by the United States are not directed against Cuba alone. During the past 80 years, such "sanctions" have been imposed on various countries on 120 occasions, 104 of them since the Second World War. According to information provided by the President of the United States' own closest advisers, such unilateral measures were used against 75 countries accounting for 52 per cent of the world's population during 1998.

13. Cuba believes that the international community cannot ignore such cruel and illegal behaviour. Cuba reiterates its total, active rejection of the use of such measures, which are utterly incompatible with the rules governing good relations between States and have a negative impact on international trade and on the normal development of international economic relations.

14. **Germany** recalls that member States of European Union abstained in the vote on General Assembly resolution 52/181. It is the view of EU that economic measures must be in keeping with the principles of international law, as laid down in the Charter of the United Nations, and with the broadest interpretation of the principles of the multilateral trading system set up by the World Trade Organization. Unilateral coercive economic measures that violate international law must not be taken against any member of the international community notwithstanding the level of development. In addition, EU makes a distinction between measures imposed unilaterally by individual States and those that are undertaken with full authority of the Security Council and in conformity with the Charter of the United Nations.

15. **Jamaica** is unequivocally opposed to the imposition of unilateral economic measures as a means of political and economic coercion against developing countries and does not itself employ action of that kind.

16. **Malta** continues to respect the sanctions imposed by the Security Council and to abide by them to the letter.

17. **Mexico**, in accordance with its position on General Assembly resolution 52/181, is convinced that the international community should adopt urgent and effective measures to eliminate the use of unilateral economic measures against developing countries that are not authorized by relevant organs of the United Nations or are inconsistent with the principles of international law as set forth in the Charter of the United Nations, and that contravene the basic principles of the multilateral trading system. The Government of Mexico is required by the Constitution to conduct its foreign policy in accordance with the rules of international law which prohibit the use of coercive measures against any State. The use of such measures can be contemplated only by the appropriate international bodies, as established by international law. Mexico is in favour of resolving conflicts by peaceful means, in principle through consultation and negotiation or through the dispute settlement mechanisms provided for in the various international treaties; it is opposed to the use of unilateral coercive economic measures by any country as a means of exerting pressure in order to change a political or economic situation that lies outside its territorial jurisdiction.

18. In October 1996, Mexico promulgated the Act to Protect Trade and Investment from Foreign Norms that Contravene International Law. Under this Act: (a) national courts are prohibited from recognizing and enforcing foreign judicial decisions and orders based on foreign legislation with extraterritorial effects in violation of international law against companies established or domiciled in Mexico; (b) companies established or domiciled in Mexico are prohibited from acting or failing to act, by virtue of such legislation, in ways that may be harmful to Mexican trade or investment; (c) physical or legal persons domiciled or established in Mexico shall have the right to apply to the federal courts to request compensation for loss resulting from judicial or administrative proceedings of foreign courts or authorities in implementation of such legislation; (d) national courts shall be authorized to recognize and enforce, as appropriate, judgements and awards issued in other countries ordering persons who have derived economic benefit from a judgement or award issued in their favour on the basis of foreign legislation to pay compensation.

19. In accordance with General Assembly resolution 52/181, Mexico has expressed its opposition to such measures in various international trade forums such as the Organisation for Economic Cooperation and Development (OECD) and the World Trade Organization.

20. **Paraguay** supports General Assembly resolution 52/181, wherein the Assembly reaffirms the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[1] which states, *inter alia*, that no States may use or encourage the use of unilateral economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights. Within the Organization of American States (OAS), the United Nations and the Río Group, Paraguay has stated its opposition to unilaterally promulgated legislation of an extraterritorial nature that imposes sanctions on the companies and nationals of third States.

21. **Poland** does not use any unilateral measures as a means of political and economic coercion against developing countries.

22. **The United States of America** believes that, in a world where technology and commerce tie nations together more closely than ever before, there will come times when the community of nations must band together against threats to peace and international norms. One need only look at the headlines of a newspaper to see attempts to develop weapons of mass destruction, terrorism, ethnic slaughter and other war crimes, denial of basic human rights and attacks on democracy. In dealing with threats to peace and international norms, the first resort must always be diplomacy. Much can be done with persuasion, especially if like-minded nations cooperate in approaching an offending Government. Unfortunately, there are and will be times when there is no choice but to resort to force. And force should be a last resort, a means that should be used only when all else has failed.

23. In the opinion of the United States, there needs to be a foreign policy tool for situations in the middle, when diplomacy has been inadequate, but force is not yet appropriate. This is the place of sanctions, including economic sanctions. It is important that the international community keep this potentially valuable tool at its disposal. If sanctions are unavailable for whatever reason, nations may feel they have no choice but to give in to intolerable threats, or proceed to force. Therefore, all States should recognize that, in principle, sanctions are legitimate.

24. The United States considers that sanctions must also be effective. To this end and when possible, sanctions should be: (a) multilateral, to maximize pressure on the offending State, show unity of purpose, make the sanctions more difficult to evade, and distribute the costs of sanctions more equitably; (b) one element of a coherent strategy aimed at changing dangerous behaviour; (c) the result of rational assessment of the costs and gains of imposing particular sanctions, including the costs to neighbouring States; (d) targeted where possible at the offending regime, sparing if possible the humanitarian needs of the people of that country; and (e) continued until the dangerous behaviour ends.

25. In order to spare the humanitarian needs of the people of a country, particularly when they have no say over the policies of a tyrannical regime, the United States recently announced a general exception of food and medicine from its unilateral sanctions (except in certain narrow circumstances). Food should not be used as a weapon.

26. The United States agrees that multilateral sanctions are preferable. Nevertheless, there will come times when a nation must be prepared to act unilaterally if important national interests or core values are at issue and if attempts to build multilateral sanctions have been unsuccessful. Consequently, the United States reserves the right to use sanctions unilaterally when necessary. There will continue to be times when global responsibility will require effective sanctions. For that reason, all States should concur that such measures are legitimate.

27. **Uruguay** has not changed its position on General Assembly resolution 52/181.

III. Action taken by United Nations bodies

28. The 1995 report of the Secretary-General on the subject contains a comprehensive list of basic documents and legal instruments that include provisions pertaining to coercive economic measures (see A/50/439, paras. 18-36). Supplementary information on subsequent developments in the subject area that occurred within and outside the United Nations system is included in the 1997 report of the Secretary-General (see A/52/459, paras. 31-52). An update of the relevant decisions taken by United Nations bodies since the publication of the previous report is provided below.

General Assembly

29. In its resolution 53/4 of 14 October 1998, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", the General Assembly reiterated its call on all States to refrain from promulgating and applying laws and measures, such as that promulgated on 12 March 1996 known as the "Helms-Burton Act", the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation, in conformity with their obligations under the Charter of the United Nations and international law. In the same resolution, the Assembly once again urged States that had and continued to apply such laws and measures to take the necessary steps to repeal or invalidate them as soon as possible in accordance with their legal regime; and requested the Secretary-General, in consultation with the appropriate organs and agencies of the United Nations system, to prepare a report on the implementation of the resolution in the light of the purposes and principles of the Charter and international law and to submit it to the Assembly at its fifty-fourth session.

30. In its resolution 53/10 of 26 October 1998, entitled "Elimination of coercive economic measures as a means of political and economic compulsion", the General Assembly reaffirmed the inalienable right of every State to economic and social development and to choose the political, economic and social system that it deemed to be most appropriate for the welfare of its people, in accordance with its national plans and policies; expressed its deep concern at the negative impact of unilaterally imposed extraterritorial coercive economic measures on trade and financial and economic cooperation, including trade and cooperation at the regional level, as well as the creation of serious obstacles to the free flow of trade and capital at the regional and international levels; reiterated its call for the immediate repeal of unilateral extraterritorial laws that imposed sanctions on corporations and nationals of other States; again called upon all States not to recognize or apply extraterritorial coercive economic measures or legislative enactments unilaterally imposed by any State; and requested the Secretary-General to submit to the Assembly at its fifty-fifth session a report on the implementation of the resolution.

31. In its resolution 53/141 of 9 December 1998, entitled "Human rights and unilateral coercive measures", the General Assembly urged all States to refrain from adopting or implementing any unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with all their extraterritorial effects, which created obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights[2] and other international human rights instruments, in particular the right of individuals and peoples to development; rejected unilateral coercive measures with all their extraterritorial effects as tools for political or economic pressure against any country, in particular against developing countries, because of their negative effects on the realization of all the human rights of vast sectors of their populations, in particular children, women and the elderly; and called upon Member States that had initiated such measures to commit themselves to their obligations and responsibilities arising from the international human rights instruments to which they were party by revoking such measures at the earliest time possible.

32. In the same resolution, the General Assembly urged the Commission on Human Rights to take fully into account the negative impact of unilateral coercive measures, including the enactment of national laws and their extraterritorial application, in its task concerning the implementation of the right to development; requested the United Nations High Commissioner for Human Rights, in discharging her functions relating to the promotion, realization and protection of the right to development, to give urgent consideration to the resolution in her annual report to the Assembly; and requested the Secretary-General to bring the resolution to the attention of all Member States, to seek their views and information on the implications and negative effects of unilateral coercive measures on their populations and to submit accordingly a report thereon to the Assembly at its fifty-fourth session.

Commission on Human Rights

33. The Commission on Human Rights, in its resolution 1999/21 of 23 April 1999 on human rights and unilateral coercive measures (see E/1999/23 (Part I), chap. II, sect. A), urged all States to refrain from adopting or implementing unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with extraterritorial effects, which created obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development; rejected the application of such measures as tools for political or economic pressure against any country, particularly against developing countries,

because of their negative effects on the realization of all human rights of vast sectors of their populations, *inter alia*, children, women, the elderly, and disabled and ill people; reaffirmed, in that context, the right of all peoples to self-determination, by virtue of which they freely determined their political status and freely pursued their economic, social and cultural development; and also reaffirmed that essential goods such as food and medicines should not be used as tools for political coercion, and that under no circumstances should people be deprived of their own means of subsistence and development.

34. In the same resolution, the Commission on Human Rights underlined that unilateral coercive measures were one of the major obstacles to the implementation of the Declaration on the Right to Development[3] and, in that regard, called upon all States to avoid the unilateral imposition of economic coercive measures and the extraterritorial application of domestic laws that ran counter to the principles of free trade and hampered the development of developing countries, as recognized by the Intergovernmental Group of Experts on the Right to Development in its most recent report. The Commission invited the new open-ended working group on the right to development to give due consideration to the question of human rights and the negative impact of unilateral coercive measures; invited all Special Rapporteurs and existing thematic mechanisms of the Commission in the field of economic, social and cultural rights to pay due attention, within the scope of their respective mandates, to the negative impact and consequences of unilateral coercive measures; decided to give due consideration to the negative impact of unilateral coercive measures in its task concerning the implementation of the right to development; requested the United Nations High Commissioner for Human Rights, in discharging her functions in relation to the promotion, realization and protection of the right to development, to pay due attention and give urgent consideration to the resolution; and decided to examine that question, on a priority basis, at its fifty-sixth session.

Committee on Economic, Social and Cultural Rights

35. The Committee on Economic, Social and Cultural Rights adopted, on 4 December 1997, General Comment No. 8 on "The relationship between economic sanctions and respect for economic, social and cultural rights".[4] In view of the fact that economic sanctions have been imposed with increasing frequency, both internationally, regionally and unilaterally, the stated purpose of the General Comment was to emphasize that, whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights,[5] as well as the provisions of the Charter of the United Nations that relate to human rights (Articles 1, 55 and 56).

36. Deriving from its considerations, the Committee identified two sets of obligations. The first set relates to the affected State. The imposition of sanctions does not in any way nullify or diminish the relevant obligations of the State party. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. While sanctions will inevitably diminish the capacity of the affected States to fund or support some of the necessary measures, the State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of economic, social and cultural rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society (para. 10).

37. The second set of obligations relates to the party or parties responsible for the imposition, maintenance or implementation of the sanctions, whether it be the international community, an international or regional organization, or a State or group of States. In this respect, the Committee considers that there are three conclusions that follow logically from the recognition of economic, social and cultural human rights (para. 11):

(a) First, these rights must be taken fully into account when designing an appropriate sanctions regime. Without endorsing any particular measures in this regard, the Committee notes proposals such as those calling for the creation of a United Nations mechanism for anticipating and tracking sanctions impacts, the elaboration of a more transparent set of agreed principles and procedures based on respect for human rights, the identification of a wider range of exempt goods and services, the authorization of agreed technical agencies to determine necessary exemptions, the creation of a better-resourced set of sanctions committees, more precise targeting of the vulnerabilities of those whose behaviour the international community wishes to change, and the introduction of greater overall flexibility (para. 12);

(b) Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force. When an external party takes upon itself even partial responsibility for the situation within a country (whether

under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population (para. 13);

(c) Third, the external entity has an obligation to take steps, individually and through international assistance and cooperation, especially economic and technical, in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country (para. 14).

IV. Summary of the deliberations of the expert group meeting

38. Pursuant to General Assembly resolution 52/181, the Department of Economic and Social Affairs of the United Nations Secretariat convened in New York from 14 to 16 June 1999 an ad hoc expert group meeting on the subject "Unilateral economic measures as a means of political and economic coercion against developing countries". The purpose of the meeting was to solicit the views of internationally recognized experts from different geographical regions and various branches of social science on key substantive issues related to the imposition of coercive economic measures, in particular the impact of such measures on the affected countries, including the impact on trade and development. To this end, the expert group focused on current concepts, recent developments, available case studies and emerging policy issues pertaining to the unilateral versus multilateral application of economic sanctions, with a view to arriving at agreed conclusions and observations.

39. The members of the expert group participating in their personal capacities were: Claude Bruderlein (Switzerland); David Cortright (United States); Margaret P. Doxey (Canada/United Kingdom of Great Britain and Northern Ireland); Kimberly Ann Elliott (United States); Helga Hoffmann (Brazil); Randhir B. Jain (India); Hasan-Askari Rizvi (Pakistan); Nicolaas J. Schrijver (Netherlands); and Geedreck Uswatte-Aratchi (Sri Lanka). Representatives of concerned departments, programmes and specialized agencies of the United Nations system, as well as relevant international and regional organizations, were also invited to attend the meeting as observers.

40. The group had before it five working papers presented to the meeting: "Coercive economic measures: the risks and costs of unilateralism" by Margaret P. Doxey; "The use of coercive economic measures: an international law perspective" by Nicolaas J. Schrijver; "Making sanctions smarter? The effects of financial sanctions" by Kimberly Ann Elliott; "Targeting financial sanctions: a review of the Interlaken process" by Claude Bruderlein; and "Bombs, carrots, and sticks: the role of economic sanctions and incentives in preventing the proliferation of weapons of mass destruction" by David Cortright. As background documentation on the subject, relevant decisions of the United Nations bodies, and reports of the Secretary-General, as well as special studies and publications on various aspects of the matter, were also made available at the meeting.

41. The main findings of the expert group meeting are summarized below.

Conceptual issues

42. As a starting point, the expert group recapitulated the core defining features and essential elements for objective determination of an unacceptable coercive economic act (or measure) as suggested by the 1997 expert group meeting on the subject (see A/52/459, paras. 58-61). These indicators include: (a) unilateral or narrow-group basis in the judgement of allegedly wrongful or objectionable policies of target State(s) subject to economic coercion; (b) coercive intent in resorting to negative economic activities that seek a domestic or foreign policy change by the target State which is to the advantage of the coercer and to the detriment of the coerced; (c) sizeable economic damage, or a credible threat thereof, as a result of manipulating economic relationships and exploiting asymmetric links between the economies of the sender State and the target State; and (d) negative, interventionist nature (that is to say, providing no offer of reciprocal concession, adequate incentives or reward systems to induce policy changes). Since terminology and definitions often vary, those characteristics were deemed essential for distinguishing economic coercion from other economic measures of a persuasive or symbolic nature, as well as policy conditions, such as those often attached to public sector lending or official development assistance (ODA).

43. The group also reviewed the typology of coercive economic measures and the classification of policy objectives in the exercise of coercion by negative economic means as contained in the 1997 report of the Secretary-General (see A/52/459, paras. 62-71). Although some additional suggestions and comments were provided, the outcome of the previous discussion was found generally useful and fairly complete.[6] It was reaffirmed that particular objectives attributable overall to unacceptable coercive economic measures would include: (a) exerting pressure for

the adoption by the target State of domestic or foreign policies that are in the political or economic interest of the sender State; (b) obtaining unreciprocated concessions or privileged treatment for the sender State or its nationals; (c) weakening the target country's economic capability, thus undermining its ability to pursue policies of its own choice; and (d) seeking the destabilization or ouster of a target regime deemed resistant or opposed to the sender State's interests.

44. The expert group observed that the continued lack of clearly defined and generally agreed criteria of acceptability provides for subjectivity in perception and judgement regarding the use of coercive economic measures and bears the potential for arbitrariness and abuse. Thus, publicly stated policy objectives and the real motives or true intentions in adopting negative measures are usually interrelated but not always identical (for example, such measures may be intended primarily to satisfy domestic constituencies, rather than international community interests). Therefore, consideration of compliance-oriented economic measures should be based on internationally recognized, acceptable and agreed norms, standards and instruments. In the political area, these may relate to deterring, limiting or ending conflict, non-proliferation of weapons of mass destruction, countering international terrorism. In the economic, social and related fields, examples may include protecting basic human rights, and safeguarding internationally agreed environmental, and labour- and health-related standards, as well as combating drug trafficking and promoting democracy and good governance. Gross violations of international norms, standards and obligations may render coercive measures justifiable in certain cases, but multilateralism is always preferable to unilateralism.

45. The expert group examined a wide range of adverse effects that are associated with the unilateral imposition of economic measures as a means of political coercion. In this context, it was recognized that coercive economic measures, whether unilateral or multilateral, not only adversely affect the target State, but may also entail substantial costs and risks for the sender State(s), as well as have the potential to produce spillover effects on non-target countries.[7] Many of these effects, particularly those of an economic, social and humanitarian nature, are common to all negative economic measures regardless of their sponsorship, but experience has shown that unilateral measures can give rise to additional political risks, excessive socio-economic costs and serious ethical concerns. Therefore, the group felt that specific case studies should take due account of all the essential political, economic and humanitarian factors for assessing the impact of unilateral measures on the affected States, in particular developing countries. In this regard, it was also recalled that applicable tools for estimating the potential economic and social effects of coercive measures had been explored during the 1997 exercise on basic criteria and methodologies for such impact assessment (see A/52/459, paras. 82-93). Further work is required in this area.

46. The expert group observed that in most cases developing countries have been the targets of coercive economic measures imposed either unilaterally or multilaterally.[8] In this connection, it identified and discussed, in general terms, a number of structural and other vulnerabilities that make developing countries particularly susceptible to economic coercion. These include: (a) their relatively weak position in the system of international relations as a whole; (b) their persisting socio-economic problems and challenges of development; (c) their narrow internal resource base and high level of dependence on foreign trade (for example, a few commodities for export earnings), investment and aid; (d) their incomplete integration in the multilateral trading, monetary and financial systems and global economic networks; (e) their relatively low level of integration within evolving interregional, regional and subregional structures; (f) their special difficulties in the face of globalization and its challenges; and (g) their internal instability and potential for conflict situations. The same factors, taken either individually or in combination, account for especially severe consequences incurred by developing countries as a result of external pressure which distorts the normal pattern of international economic relations.

47. Based on available data, the group noted the low level of effectiveness of unilateral coercive economic measures which are often counter-productive in bringing about the desired policy changes, may entail unwelcome political risks and excessive economic costs, give rise to serious humanitarian and ethical concerns, run counter to development goals and limit the scope for diplomacy, positive economic measures and international cooperation in general. In particular, the group expressed its deep concern about the potential and actual adverse effects of unilateral coercive economic measures on developing countries and the structure of international relations, especially in the area of trade and development. Therefore, the group concluded that, in a general sense, the use of unilateral economic measures as a means of political and economic coercion, especially the practice of secondary boycotts against third-party States, should be strongly discouraged.

Legal perspectives

48. The expert group reaffirmed that the basic norms and rules of international law that are applicable in assessing the legality of coercive economic measures are those of non-intervention and non-discrimination, based on the principle of the sovereign equality of all States, the obligation to settle disputes by peaceful means and the prohibition of the threat or use of force against the territorial integrity or political independence of any State, as set forth in the Charter of the United Nations. Subsequent interpretations of these principles of international law, as elaborated in relevant international legal instruments and documents, proscribe, explicitly or implicitly, the unilateral imposition of coercive economic measures as instruments of intervention in matters that are essentially within the domestic jurisdiction of any State, without prejudice, however, to the application of preventive or enforcement measures under Chapter VII of the Charter of the United Nations.

49. Notwithstanding the fact that the generally accepted interpretation of basic principles of international law prohibits, as a general rule, the use by one State of economic coercion against another State, the group recalled the 1997 discussion on "legitimacy indicators", or allowable exceptions under certain circumstances in which coercive economic measures may be appropriate to ensure compliance with internationally agreed norms, standards or obligations (see A/52/459, paras. 76-78). The group was also apprised of the work of the International Law Commission on the development and codification of the law of State responsibility, in particular draft articles regarding countermeasures in respect of an internationally wrongful act (that is to say, prior breach of international law by the target State). It was noted that the possible taking of countermeasures by an injured State against another State in consequence of an internationally wrongful act of that other State is subject to certain conditions and restrictions. In this connection, reference was made to a number of material and procedural principles of general international law such as: (a) principles of necessity and effectiveness; (b) principles of proportionality and subsidiarity; and (c) respect for (or non-derogation from) basic human rights and international humanitarian law. These legal conditions and restrictions seek to constrain the resort to coercive economic measures and to prevent or reduce the abuse and misuse of such measures, especially their unilateral application. Therefore, the group stressed the importance of the progressive development and codification of relevant norms of international law, in particular the law of State responsibility, including prohibited countermeasures in response to prior injury or internationally wrongful acts, as well as the need for strengthening specific enforcement provisions and dispute settlement procedures or mechanisms incorporated in various international regimes.

50. The group agreed that the unilateral imposition of coercive economic measures is inconsistent with core principles and norms of international economic law, such as (a) freedom of international trade, investment and navigation; (b) non-discrimination, including the so-called most-favoured nation (MFN) clause and the concept of national or equal treatment; and (c) sovereignty over natural resources and the right to regulate foreign investment and economic activities. It was duly noted that those principles are subject to a number of restrictions, exceptions and waivers, some of which may be invoked in a self-governing fashion, primarily for the protection of national "essential security interests". Nevertheless, the group felt that unilateral measures of coercion are increasingly at odds with the evolving principles and rules of international economic and social cooperation that are embodied in the Charter of the United Nations and the constituent treaties of multilateral trade and financial institutions, such as the World Trade Organization, and that seek to provide, *inter alia*, mechanisms and procedures for collective policy review and dispute settlement. In particular, the group expressed its deep concern about the extraterritorial jurisdiction and third-party effects of certain unilateral measures of economic and political coercion against developing countries (namely, the 1996 United States legislation on sanctions against Cuba, the Islamic Republic of Iran and the Libyan Arab Jamahiriya)[9] and shared the view that such measures were irreconcilable with basic norms and principles of international law and inconsistent with the objectives of the multilateral trading system (see also A/52/459, paras. 47-52 and 79-81).

Policy options and alternatives

51. The expert group reviewed the current unilateral and multilateral approaches to minimizing the adverse effects of coercive economic measures on the general population, particularly its most vulnerable groups.[10] These options include: (a) sparing use of unilateral coercive economic measures; (b) choosing non-coercive measures of a symbolic or persuasive nature (for example, a wide range of diplomatic, political and cultural measures can serve to convey a message of disapproval rather than attempt to force a change in policy by disrupting the economy); (c) mandatory humanitarian exemptions from trade

embargoes or comprehensive sanctions regimes with regard to export of food, medicine and other essential humanitarian goods; (d) employment of "smart" or targeted sanctions which are designed to penalize directly those individuals or policy makers who are responsible for an objectionable action; and (e) combining sanctions with incentives or inducements for cooperation and compliance. Although some of these approaches may be more appropriate at the multilateral level,[11] all of them are applicable to making unilateral measures more humane as well.[12]

52. The group observed that among various improvements and alternatives, the concept of "smart sanctions" has recently attracted the widest attention, at both the national and international levels.[13] The rationale behind this approach is twofold: (a) to target the effects, as much as possible, on the political, military or economic elites responsible for objectionable policies or criminal individuals, thus enhancing the effectiveness of sanctions; and (b) to spare the innocent victims who have no control over policy or power to change it, thus making sanctions less blunt. Smart sanctions include targeted financial measures, particularly asset freezes, visa-based restrictions on international travel, and participation bans. Under the heading of smart sanctions, reference is also made to selective trade sanctions that may involve restrictions on those particular products or services (for example, weaponry and luxury items) that are more likely to affect the targeted elites or criminal entities rather than the general population.

53. Particular attention was paid to the issue of targeting financial sanctions and their effects. There is evidence to suggest that financial sanctions may be relatively more effective than trade embargoes. In the most comprehensive empirical analysis of economic sanctions to date, financial sanctions were found relatively more likely to contribute to the achievement of foreign policy goals than either financial sanctions imposed in conjunction with trade controls or trade sanctions employed alone.[14] In general, financial sanctions are perceived as measures of greater effectiveness because they are relatively easier to enforce by senders, harder to evade by targets and often spur market-reinforcing effects. However, unilateral financial sanctions will be less effective than similar multilateral measures. Targeting financial stocks (for example, overseas government-owned or private assets) is relatively easier than focusing on financial flows, especially those from private sources. In principle, money is fungible and the problem with targeting financial flows is that the more targeted the sanctions are, the easier they will be to evade.

54. The expert group reviewed the potential effects of various types of financial sanctions on the target country from the perspective of their "targetability" (that is to say, making them not only more effective, but also less blunt). It was concluded that narrowly targeted financial sanctions, such as freezing the overseas assets of individuals from the target country, would have the fewest and lowest collateral impacts on the general population, but are often difficult to implement and may be relatively easy to evade, especially with political constraints impeding the ability of the sender Government to act quickly. Moreover, the effects of such measures may be limited or diminish over time if the targeted individuals can successfully hide their assets or have unrestrained access to economic resources within their country or new financial flows from abroad. Nevertheless, financial sanctions narrowly targeted against individuals have been used unilaterally to address, *inter alia*, such transnational issues as drug trafficking and terrorism.

55. On the other hand, broad restrictions on international lending and foreign investment can cause significant economic disruption and social hardship in the target country and are therefore not necessarily more humane than trade embargoes. The impact on the target will be harder to evade and will be reinforced by market perceptions and mechanisms. However, targeting these measures more precisely is also likely to make them easier to evade. The ability to evade targeted financial sanctions tends to increase with income in the target country and the degree of sophistication of its financial markets. Outside comprehensive sanctions regimes, restrictions on private financial flows have been relatively rare. Although broad financial sanctions may have potentially high costs to creditor countries, they are likely to entail lower enforcement burdens than broad trade embargoes.

56. The most commonly used financial sanctions affect government programmes or official flows, including economic and military assistance, trade credits and political risk insurance. From the sender's perspective, this type of financial sanction is relatively low-cost and difficult to evade. Although the utility of this tool decreases as aid flows decline, the denial of aid from traditional donors may produce rather harmful effects on low-income and least developed countries which have little access to private financial markets. For humanitarian reasons, it is essential that food aid and concessional multilateral lending be consistently exempted. However, restrictions on economic aid, other than humanitarian assistance, may have limited effects on the population of target countries with corrupt Governments.

57. The expert group welcomed the Interlaken process on the targeting of multilateral financial sanctions, sponsored by the Swiss Government, with a view to improving the

effectiveness of such measures as well as minimizing the negative humanitarian impact often experienced by large segments of civilian population as a result of comprehensive sanctions regimes.[15] Based on a growing sense of individual responsibility and accountability for internationally wrongful or criminal acts, the main objective of the Interlaken process has been to elaborate on the specific requirements of targeted financial measures as a tool for exerting pressure directly on the target country's decision makers and supporters by localizing and freezing their wealth (that is to say, financial assets and transactions) on the world financial markets. Although serious technical, legal and administrative difficulties remain in this area, important progress has been made on formulating draft policies that would control the movement of assets and link national and international institutions in enforcing such controls. Most importantly, the Interlaken process has established a foundation for an informal cooperation mechanism, with the participation of Governments, the financial sector and academic think-tanks and experts, to facilitate the implementation of targeted financial sanctions.

58. The expert group stressed the importance of international cooperation, including bilateral and multilateral negotiations on contentious issues, engagement strategies and positive economic measures that involve adequate incentives and reward systems to induce policy changes, when warranted, as a more rational and viable alternative to unilateral coercive economic measures. The group agreed that in many compliance-oriented cases involving developing countries, more fruitful results can be achieved by providing additional financial and technical assistance and trade preferences to the recipient State rather than by subjecting it to coercive economic measures. From EU's experience, examples include the generalized system of trade preferences, human rights policies under the Lomé Convention[16] and the development cooperation framework with 71 developing countries in Africa, the Caribbean and the Pacific. Given the so-called moral hazard of rewarding the alleged offender for wrongdoing, it was argued that, as in the case of targeted sanctions, incentives should be also targeted to offer rewards and benefits that encourage cooperation and compliance. Inducement strategies are likely to be more effective over the long run if they are (a) consistently applied; (b) linked to reciprocal acts of cooperation; (c) targeted to empower the constituencies that are most susceptible to adopting reform policies; (d) based on commitment of adequate material resources, in particular development assistance; and (e) duly take into account the internal and external dynamics of the recipient country. It was emphasized that even in cases where coercive measures are justified, they should be combined with incentives or inducements for cooperation and compliance with international standards and obligations.

Institutional matters and follow-up

59. The expert group agreed that the multifaceted problems raised by the imposition of coercive economic measures, including their economic, social, humanitarian, legal and political implications, deserve sustained attention by the international community and multilateral bodies concerned, both within and outside the United Nations system. Within the United Nations, continued intergovernmental deliberations should be supported by an enhanced monitoring and analytical capacity of the Secretariat. Analytical work at the specialized and interdisciplinary levels should focus on conceptual and methodological issues of assessing the effects of coercive economic measures on the affected countries and the system of international economic cooperation as a whole. The monitoring function will require an improved mechanism for collating and coordinating information and analyses within the United Nations system and in cooperation with the relevant international and regional organizations, based on clearly defined mandates.

Notes

[1] General Assembly resolution 2625 (XXV), annex.

[2] General Assembly resolution 217 A (III).

[3] General Assembly resolution 41/128, annex.

[4] *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/22), annex V.

[5] See General Assembly resolution 2200 A (XXI), annex.

[6] For more details, see Margaret P. Doxey, *International Sanctions in Contemporary Perspective*, 2nd ed. (London, Macmillan Press, and New York, St. Martin's Press, 1996), chap. 3.

[7] For example, see Gary Clyde Hufbauer and others, *US Economic Sanctions: Their Impact on Trade, Jobs, and Wages* (Washington, D.C., Institute for International Economics, April 1997), *The Domestic Costs of Sanctions on Foreign Commerce* (Washington, D.C., The Congress of the United States, Congressional Budget Office, March 1999), and *Altering U.S. Sanctions Policy* (Washington, D.C., Center for Strategic and International Studies, February 1999).

[8] See Kimberly Ann Elliott and Gary Clyde Hufbauer, "'Same song, same refrain?' economic sanctions in the 1990's", *The American Economic Review*, May 1999, pp. 403-408, A

Catalog of New U.S. Unilateral Economic Sanctions for Foreign Policy Purposes 1993-1996 (Washington, D.C., National Association of Manufactures, March 1997); *Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impacts on U.S. Economic Interests with Recommendations for Policy and Process Improvement* (Washington, D.C., The President's Export Council, June 1997), appendix I.

[9] For the texts of the Cuban Liberty and Democratic Solidarity Act of 1996 (also known as the Helms-Burton Act or Libertad Act) and of the Iran and Libya Sanctions Act of 1996 (also known as the D'Amato Law), see *International Legal Materials*, vol. XXXV, No. 2 (1996), pp. 357-378, and No. 5 (1996), pp. 1273-1279, respectively.

[10] In particular, see *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions*, Thomas G. Weiss and others, eds. (Lanham, Maryland, Rowman & Littlefield Publishers, 1997); and Larry Minear and others, "Toward more humane and effective sanctions management: enhancing the capacity of the United Nations system", study commissioned by the Department of Humanitarian Affairs of the United Nations Secretariat, October 1997.

[11] See Margaret P. Doxey, *United Nations Sanctions: Current Policy Issues*, revised ed. (Halifax, Nova Scotia, Dalhousie University, 1999).

[12] For example, the United States Congress has before it the so-called "Sanctions Policy Reform Act" (S.757) which would require cost-benefit analysis before new economic sanctions are enacted, a clear statement of objectives pursued by sanctions, monitoring of the sanctions' effects and automatic termination after two years unless sanctions are renewed.

[13] See *Towards Smarter, More Effective United Nations Sanctions* (Goshen, Indiana, Fourth Freedom Forum, 1999), report of a Symposium on Security Council Sanctions, New York, 7 December 1998, and *Can Sanctions be Smarter? The Current Debate* (London, Overseas Development Institute, May 1999), report of a conference held in London, 16 and 17 December 1998.

[14] Gary Clyde Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered*, 2nd ed., revised (Washington, D.C., Institute for International Economics, 1990). The third edition is currently in preparation and should be published in 2000.

[15] See reports on Interlaken Seminars on Targeting United Nations Financial Sanctions, Swiss Federal Office for Foreign Economic Affairs, 17-19 March 1998, and 29-31 March 1999.

[16] See *The Courier*, No. 120 (March-April 1990), yellow pages, or A/AC.176/7.